



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with Neil O. Anderson and Associates, of Lodi, for Testing and Inspection Services for Lodi Avenue Reconstruction Project (\$43,149) and DeBenedetti Park Storm Drain Improvement Project (\$10,224)

MEETING DATE: May 5, 2010

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute a professional services agreement with Neil O. Anderson and Associates, of Lodi, for testing and inspection services for the Lodi Avenue Reconstruction Project in the amount of \$43,149 and DeBenedetti Park Storm Drain Improvement Project in the amount of \$10,224.

BACKGROUND INFORMATION: City Council awarded the construction contracts and appropriated funds for the DeBenedetti Park Storm Drain Project on October 7, 2009, and the Lodi Avenue Reconstruction Project on October 21, 2009. The firm performing the testing and inspection services had not been selected and, therefore, was not named. Council approval is required so the City may contract with the service provider.

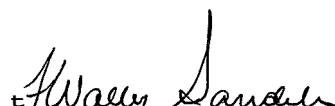
The staff at Neil O. Anderson and Associates will provide technical support and special inspection services required by the projects' construction specifications. They will also provide support staff to supplement City inspection services on these projects. Some of the services include geotechnical analyses, concrete strength testing, asphalt gradation and compaction testing. Results of the testing are used to affirm the contractors' work has been completed in conformance with the contract.

The scope of services and fees for the Neil O. Anderson and Associates agreement is attached.

Staff recommends the Council authorize the City Manager to execute a professional services agreement with Neil O. Anderson and Associates.

FISCAL IMPACT: Funding for these services was appropriated with the project funding at the time of the construction contract award.

FUNDING AVAILABLE: Not applicable.


F. Wally Sandelin
Public Works Director

Prepared by Gary Wiman, Construction Project Manager
FWS/pmf
Attachment

APPROVED:


Blair King, City Manager

AGREEMENT FOR CONSULTING SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on _____, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and NEIL O. ANDERSON AND ASSOCIATES (hereinafter "CONSULTANT").

Section 1.2 Purpose

CITY selected the CONSULTANT to provide the technical support and special inspection services required in accordance with attached scope of services, Exhibit A.

CITY wishes to enter into an agreement with CONSULTANT for Lodi Avenue Reconstruction and DeBenedetti Park Storm Drain Improvements projects (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

CONSULTANT, for the benefit and at the direction of CITY, shall perform the scope of services as set forth in Exhibit A, attached and incorporated by this reference.

Section 2.2 Time For Commencement and Completion of Work

CONSULTANT shall commence work within ten (10) days of executing this Agreement or as directed by City, and complete work under this Agreement based on a mutually agreed upon timeline.

Section 2.3 Meetings

Not Used

Section 2.4 Staffing

CONSULTANT acknowledges that CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY. The scope of services shall be performed by CONSULTANT, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONSULTANT of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel in CITY's sole discretion and shall be notified by CONSULTANT of any changes of CONSULTANT's project staff prior to any change.

CONSULTANT represents that it is prepared to and can perform all services within the scope of services specified in Exhibit A. CONSULTANT represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONSULTANT to practice its profession, and that CONSULTANT shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals.

Section 2.5 Subcontracts

CITY acknowledges that CONSULTANT may subcontract certain portions of the scope of services to subconsultants as specified and identified in Exhibit A. Should any subconsultants be replaced or added after CITY's approval, CITY shall be notified within ten (10) days and said subconsultants shall be subject to CITY's approval prior to initiating any work on the Project. CONSULTANT shall remain fully responsible for the complete and full performance of said services and shall pay all such subconsultants.

ARTICLE 3 COMPENSATION

Section 3.1 Compensation

CONSULTANT's compensation for all work under this Agreement shall not exceed the amount of Fee Proposal, attached as a portion of Exhibit A.

CONSULTANT shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONSULTANT shall submit invoices for completed work on a monthly basis, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the scope of services said work is attributable.

Section 3.3 Costs

The fees shown on Exhibit A include all reimbursable costs required for the performance of the individual work tasks by CONSULTANT and/or subconsultant and references to reimbursable costs located on any fee schedules shall not apply. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advance, in writing, by CITY.

CONSULTANT charge rates are attached and incorporated with Exhibit A. The charge rates for CONSULTANT shall remain in effect and unchanged for the duration of the Project unless approved by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance.

CONSULTANT agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONSULTANT agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONSULTANT further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONSULTANT shall not discriminate in the employment of its employees or in the engagement of any subconsultants on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 Responsibility for Damage

CONSULTANT shall indemnify and save harmless the City of Lodi, the City Council, elected and appointed Boards, Commissions, all officers and employees or agent from any suits, claims or actions brought by any person or persons for or on account of any injuries or damages sustained or arising from the services performed in this Agreement but only to the extent caused by the negligent acts, errors or omissions of the consultant and except those injuries or damages arising out of the active negligence of the City of Lodi or its agents, officers or agents.

Section 4.3 No Personal Liability

Neither the City Council, the City Engineer, nor any other officer or authorized assistant or agent or employee shall be personally responsible for any liability arising under this Agreement.

Section 4.4 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work prior to final acceptance, except as expressly provided herein.

Section 4.5 Insurance Requirements for CONSULTANT

CONSULTANT shall take out and maintain during the life of this Agreement, insurance coverage as listed below. These insurance policies shall protect CONSULTANT and any subcontractor performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from CONSULTANT'S operations under this Agreement, whether such operations be by CONSULTANT or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

1. COMPREHENSIVE GENERAL LIABILITY

\$1,000,000 Bodily Injury -

Ea. Occurrence/Aggregate

\$1,000,000 Property Damage -

Ea. Occurrence/Aggregate

or

\$1,000,000 Combined Single Limits

2. COMPREHENSIVE AUTOMOBILE LIABILITY

\$1,000,000 Bodily Injury - Ea. Person

\$1,000,000 Bodily Injury - Ea. Occurrence

\$1,000,000 Property Damage - Ea. Occurrence

or

\$1,000,000 Combined Single Limits

NOTE: CONSULTANT agrees and stipulates that any insurance coverage provided to CITY shall provide for a claims period following termination of coverage.

A copy of the certificate of insurance with the following endorsements shall be furnished to CITY:

(a) Additional Named Insured Endorsement

Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees and Volunteers as additional named insureds insofar as work performed by the insured under written Agreement with CITY. (This endorsement shall be on a form furnished to CITY and shall be included with CONSULTANT'S policies.)

(b) Primary Insurance Endorsement

Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.

(c) Severability of Interest Clause

The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.

(d) Notice of Cancellation or Change in Coverage Endorsement

This policy may not be canceled by the company without 30 days' prior written notice of such cancellation to the City Attorney, City of Lodi, P.O. Box 3006, Lodi, CA 95241.

- (e) CONSULTANT agrees and stipulates that any insurance coverage provided to CITY shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.). "Claims made" coverage requiring the insureds to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

Section 4.6 Worker's Compensation Insurance

CONSULTANT shall take out and maintain during the life of this Agreement, Worker's Compensation Insurance for all of CONSULTANT'S employees employed at the site of the project and, if any work is sublet, CONSULTANT shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the

CONSULTANT. In case any class of employees engaged in hazardous work under this Agreement at the site of the project is not protected under the Worker's Compensation Statute, CONSULTANT shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the City Attorney, City of Lodi, P.O. Box 3006, Lodi, CA, 95241.

Section 4.7 Attorney's Fees

In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the court.

Section 4.8 Successors and Assigns

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONSULTANT shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

Section 4.9 Notices

Any notice required to be given by the terms of this Agreement shall be deemed to have been given when the same is personally served or sent by certified mail or express or overnight delivery, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
 F. Wally Sandelin, Public Works Director
 221 West Pine Street
 P.O. Box 3006
 Lodi, CA 95241-1910

To CONSULTANT: _____

Section 4.10 Cooperation of CITY

CITY shall cooperate fully in a timely manner in providing relevant information that it has at its disposal.

Section 4.11 CONSULTANT is Not an Employee of CITY

It is understood that CONSULTANT is not acting hereunder in any manner as an employee of CITY, but solely under this Agreement as an independent contractor.

Section 4.12 Termination

CITY may terminate this Agreement by giving CONSULTANT at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONSULTANT shall be entitled to payment as set forth in the attached Exhibit A to the extent that the work has been performed. Upon termination, CONSULTANT shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONSULTANT with third parties in reliance upon this Agreement.

Section 4.13 Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.14 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent.

Section 4.15 Entire Agreement and Modification

This Agreement represents the entire integrated Agreement between CONSULTANT and CITY; supersedes all prior negotiations, representations, or Agreements, whether written or oral, between the parties; and may be amended only be written instrument signed by CONSULTANT and CITY.

Section 4.16 Applicable Law and Venue

This Agreement shall be governed by the laws of the State of California. Venue for any court proceeding brought under this Agreement will be with the San Joaquin County Superior Court.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

Section 4.19 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer tapes or cards, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared for this project, shall be deemed the property of CITY. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during regular business hours. Upon termination or completion, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) days.

CITY agrees to indemnify, defend and hold CONSULTANT harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were prepared.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:

By _____
RANDI JOHL
CITY CLERK

By _____
BLAIR KING
CITY MANAGER

APPROVED AS TO FORM:

Dated: _____

By _____
D. STEPHEN SCHWABAUER
CITY ATTORNEY



By: _____

Its: _____

NOA is §BE & CDOT Certified

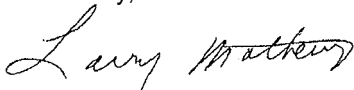
March 31, 2010

E-Mail:
Proposal No.: 2815Mr. Gary Wiman, Project Manager
City of Lodi Public Works Department
221 West Pine Street
Lodi CA 95240Subject: Proposal for Quality Assurance Services - **REVISED**
Lodi Avenue Reconstruction – ARRA Funded - Lodi, CaliforniaThank you for the opportunity to submit this **all inclusive** proposal to provide QA services for the subject project.

Service	Hours/Units	Rate	Fee
Field/Lab Services Provided by NOA			
Project Inspector	200 hours	\$ 84.00/hour	\$ 16,800.00
Field Density Testing	30 hours	\$ 84.00/hour	\$ 2,520.00
4" Proctor	2 each	\$190.00/each	\$ 380.00
6" Proctor	1 each	\$200.00/each	\$ 200.00
AC Tester – Day Rate – Regular Time	56 hours	\$ 84.00/hour	\$ 4,704.00
AC Plant Inspector (Sample at Plant)	28 hours	\$ 78.00/hour	\$ 2,184.00
AC Coring – Day Rate,	14 hours	\$145.00/hour	\$ 2,030.00
CTM 125 Sample Hwy Material	8 hours	\$ 78.00/hour	\$ 624.00
CTM 231 Rel Comp w/NucGauge	6 hours	\$ 84.00/hour	\$ 504.00
CTM 539 Sampling Fresh Concrete – Slump & % Air	8 hours	\$ 78.00/hour	\$ 624.00
Core Bit Charges	14 each	\$ 34.00/each	\$ 476.00
CTM 202 Sieve Fine Coarse Agg.	2 each	\$ 80.00/each	\$ 160.00
CTM 206 Specific Gravity	26 each	\$140.00/each	\$ 3,640.00
CTM 214 Soundness	1 each	\$350.00/each	\$ 350.00
CTM 216 Rel Comp Untreat	2 each	\$200.00/each	\$ 400.00
CTM 217 Sand Equivalent	26 each	\$140.00/each	\$ 3,640.00
CTM 308 Bulk Specific Gravity Bit Mix	14 each	\$ 50.00/each	\$ 700.00
CTM 382 Asphalt Content Ign Oven	14 each	\$160.00/each	\$ 2,240.00
CTM 518 Density Fresh Concrete	1 each	\$ 40.00/each	\$ 40.00
CTM 521 Comp Strength Cylinders (3/set)	1 each	\$ 78.00/each	\$ 78.00
Los Angeles Rattler	1 each	\$550.00/each	\$ 550.00
Grab & Sample Cement	1 each	\$ 45.00/each	\$ 45.00
R-Value	1 each	\$260.00/each	\$ 260.00
PRICES VALID 1 YEAR FROM THE DATE OF PROPOSAL		Estimated QC Total	\$ 43,149.00

Services provided on a time and materials basis, which means you are **voiced** in 2, 4, 6 and 8 hour minimums.If you have any questions, contact our office at (209)367-3701 or e-mail rv @ or
@ .

Sincerely,

Larry Mathews
Marketing Director

March 31, 2010

E-Mail:
Proposal No.: 2821

Mr. Gary Wiman, Project Manager
City of Lodi Public Works Department
221 West Pine Street
Lodi CA 95240

Subject: Proposal for Testing & Observation Services - **REVISED**
DeBenedetti Park – Phase I Improvements - Lodi, California

Dear Mr. Wiman:

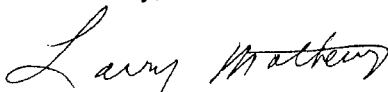
Thank you for the opportunity to submit this all-inclusive proposal to provide construction observation and testing services for the subject project.

Service	Hours/Units	Rate		Fee
<u>Soils</u>				
Field Density Testing – Site/Pad/Utility Trench	20 hours	\$ 84.00/hour	\$	1,680.00
4" Proctor	1 each	\$190.00/each	\$	190.00
6" Proctor	1 each	\$200.00/each	\$	200.00
	Estimated Soils Total		\$	2,070.00
<u>Concrete</u>				
Concrete Observation – Sidewalk/CI PC Pipe/Outfall/Weir	68 hours	\$ 78.00/hour	\$	5,304.00
Rebar Observation	20 hours	\$ 78.00/hour	\$	1,560.00
Compression Test Cylinder	40 each	\$ 26.00/each	\$	1,040.00
Sample Pick Up	10 trips	\$ 25.00/trip	\$	250.00
	Estimated Concrete Total		\$	8,154.00
	Estimated Grand Total		\$	10,224.00

Services provided on a time and materials basis, which means you are invoiced in 2, 4, 6 and 8 hour minimums portal to portal. A shift differential of \$3.00/hour is charged for services provided after 7:00 p.m. Overtime is billed at 1.5 times the hourly rate for work after the first 8 hours of the workday and Saturday. Double time is charged for work after 8 hours of Saturday, Sunday and holidays.

If you have questions, please call me at (209)367-3701 or e-mail larry.mathews@noanderson.com.

Sincerely,



Larry Mathews
Marketing Director

RESOLUTION NO. 2010-53

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE PROFESSIONAL SERVICES
AGREEMENT WITH NEIL O. ANDERSON AND ASSOCIATES FOR
TESTING AND INSPECTION SERVICES FOR LODI AVENUE
RECONSTRUCTION PROJECT AND DEBENEDETTI PARK STORM
DRAIN IMPROVEMENT PROJECT

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WHEREAS, City Council awarded the construction contracts and appropriated funds for the DeBenedetti Park Storm Drain Project on October 7, 2009, and the Lodi Avenue Reconstruction Project on October 21, 2009, but the firm performing the testing and inspection services was not named. Council approval is required so the City may contract with the service provider; and

WHEREAS, Neil O. Anderson and Associates staff will provide technical support and special inspection services required by code. They will also provide support staff to supplement City inspection services on these projects; and

WHEREAS, staff recommends City Council authorize the City Manager to execute a professional services agreement with Neil O. Anderson and Associates.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Professional Services Agreement for Testing and Inspection Services with Neil O. Anderson and Associates, of Lodi, California, for the Lodi Avenue Reconstruction Project in the amount of \$43,149 and the DeBenedetti Park Storm Drain Improvement Project in the amount of \$10,244.

Dated: May 5, 2010

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I hereby certify that Resolution No. 2010-53 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 5, 2010, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce, and
Mayor Katzakian

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk